change in the law, for such conduct has not yet been held to violate the anti-trust law or the federal equity law. But a strike otherwise lawful would become actionable as a malicious conspiracy if a particular judge thought it was impelled by an "unlawful purpose."[10] Moreover, for strikers to induce employees or customers to break their contracts would also be actionable.[11] Both these possibilities these provisions seem to obviate. For the blunt command that no injunction shall prohibit any person from ceasing work or peacefully pursuading others so to do clearly rules out all considerations of malice or the inducing of a breach of contract. To this extent the act restricts the equity powers of the federal courts, but not the general operation of the anti-trust laws; for these considerations form no part of the gist of the offence against the anti-trust law. This, then, it is submitted, is the extent of the "special privilege" which in the light of the actual decision in the *Duplex Printing* Case, Section 20 can possibly confer: that a strike accompanied by peaceful picketing is no longer actionable as a malicious conspiracy or because it induces a breach of contract.

THE LIABILITY OF A LANDLORD FOR INJURIES RESULTING FROM DEFECTS IN THE LEASED PREMISES.—It has often been said that "fraud apart, there is no law against letting a tumble-down house."[1] Thus, in a demise of premises, there is ordinarily no implied covenant or warranty of fitness for habitation.[2] The only implication from a mere letting is a covenant for quiet enjoyment.[3] Hence, in the absence of express agreement, the lessor is not liable in contract for defects in the leased premises. When the lessor covenants to repair, no recovery in contract is allowed for injury to the person[4] or property[5] of the tenant resulting from a breach of the covenant. The measure of damages is only the cost of repairs.[6] And obviously, a member of the public and hence a stranger cannot recover at all in contract.[7]

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peaceful means so to do; or from attending at any place where any such person . . . may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person . . . to abstain from working." (1914) 38 Stat. 730, § 20, U. S. Comp. Stat. (1916) § 1243d. These provisions plainly have nothing to do with the boycott. Moreover, the court failed to advert to them as bearing upon the boycott, and said expressly that the "ceasing to patronize" clause (discussed in the body of this note) applied specifically to the boycott.

[10] *Cf.* Mr. Justice Brandeis' dissenting opinion: "By virtue of that doctrine [malicious combination] damage resulting from conduct such as striking . . . which without more might be *damnum absque injuria* because the result of trade competition, became actionable when done for the purpose which a judge considered socially or economically harmful and therefore branded as malicious and unlawful." 41 Sup. Ct. at p. 183.

[11] *Hitchman Coal & Coke Co.* v. *Mitchell* (1917) 245 U. S. 222, 257, 38 Sup. Ct. 65.

[1] Per Earle, C. J., in *Robbins* v. *Jones* (1863) 15 C. B. N. S. 221, 240; see *Jaffe* v. *Harteau* (1874) 56 N. Y. 398, 401.

[2] *Doyle* v. *Union Pac. Ry.* (1893) 147 U. S. 413, 13 Sup. Ct. 333; see *Daly* v. *Wise* (1892) 132 N. Y. 306, 30 N. E. 837; *Murray* v. *Albertson* (1887) 50 N. J. L. 167, 13 Atl. 394; *Foster* v. *Peyser* (1852) 63 Mass. 242; but see *Ingalls* v. *Hobbs* (1892) 156 Mass. 348, 31 N. E. 286, following the much-questioned English doctrine as announced in *Smith* v. *Marrable* (1843) 11 M. & W. 5, that on a demise of a furnished house for a short time, a covenant of fitness for habitation will be implied.

[3] See *McKenzie* v. *Cheetham* (1891) 83 Me. 543, 22 Atl. 469.

[4] *Schick* v. *Fleishhauer* (1898) 26 App. Div. 210, 49 N. Y. Supp. 962.

[5] *Leavitt* v. *Fletcher* (1865) 92 Mass. 119.

[6] *Schick* v. *Fleishhauer, supra,* footnote 4; *Leavitt* v. *Fletcher, supra,* footnote 5; see *Davis* v. *Smith* (1904) 26 R. I. 129, 58 Atl. 630.

[7] *Reynolds* v. *Van Beuren* (1898) 155 N. Y. 120, 49 N. E. 763.

But the theory of the landlord's liability in tort has not been made so clear by the courts. The lessor is not liable to the lessee,[8] the members of his family,[9] his guests,[10] servants,[11] licensees or invitees[12] for injuries resulting from defects in the premises unless he concealed them[13] at the time of the lease.[14] Nor, by the weight of authority, does a breach by nonfeasance[15] of the lessor's covenant to repair create any tort liability.[16] An exception to this general rule is made where premises are leased for a public or quasi-public purpose. The lessor of a pier,[17] toboggan slide,[18] amusement hall,[19] amusement park[20] or hotel[21] is liable to members of the public who are injured as a result of latent defects existing at the time[22] of the lease if he then knew or by the exercise of reasonable diligence should have known of such defects.

In the recent case of *Vousden* v. *United States Realty Corporation* (1920) 194 App. Div. 26, 184 N. Y. Supp. 763, a servant of the lessee was injured by the collapse of a shed which was in a dilapidated condition at the time of the existing lease. The servant was denied relief on the ground that a landlord is not liable to a tenant or those in privity with him unless the "element of public use or public danger or risk to adjoining property" is present. If the demised premises are dangerous to the public, a stranger can recover from the lessor on the theory that the lessor owes a duty to the public which he cannot escape merely by a demise of the premises.[23]

The distinction attempted between public and private use is of doubtful validity. The courts have tried to justify it upon three grounds: (1) nuisance,[24] (2) implied invitation,[25] (3) negligence.[26] Even if what in these cases the court calls nuisances are such in fact, it can scarcely be contended that they are

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[8] *Loupe* v. *Wood* (1877) 51 Cal. 586.

[9] *Jaffe* v. *Harteau, supra,* footnote 1.

[10] *McKenzie* v. *Cheetham, supra,* footnote 3.

[11] *O'Brien* v. *Capwell* (N. Y. 1870) 59 Barb. 497.

[12] *Mellen* v. *Morrill* (1879) 126 Mass. 545; *contra, Patten* v. *Bartlett* (1914) 111 Me. 409, 89 Atl. 375.

[13] In some jurisdictions the landlord is under a duty to exercise reasonable diligence to discover defects in the leased premises. *Meade* v. *Montrose* (1913) 173 Mo. App. 722, 160 S. W. 11.

[14] He is under no obligation to disclose defects which he has discovered subsequent to the lease. *Bertie* v. *Flagg* (1894) 161 Mass. 504, 37 N. E. 572.

[15] But the lessor is liable for misfeasance in the making of repairs. *Pratt, Hurst & Co.* v. *Tailer* (1906) 186 N. Y. 417, 79 N. E. 328; *Zelzer* v. *Cook* (1909) 62 Misc. 471, 115 N. Y. Supp. 173; *Walker* v. *Swayzee* (1856) 3 Abb. Pr. 136.

[16] (1916) 16 COLUMBIA LAW REV. 593; *Davis* v. *Smith, supra,* footnote 6; *Schick* v. *Fleishhauer, supra,* footnote 4; *Kushes* v. *Ginsburg* (1904) 99 App. Div. 417, 91 N. Y. Supp. 216, aff'd no opinion (1907) 188 N. Y. 630, 81 N. E. 1168; *Stelz* v. *Van Dusen* (1904) 93 App. Div. 358, 87 N. Y. Supp. 716; *Shackford* v. *Coffin* (1901) 95 Me. 69, 49 Atl. 57.

[17] *Swords* v. *Edgar* (1894) 59 N. Y. 28.

[18] *Barrett* v. *Lake etc. Co.* (1903) 174 N. Y. 310, 66 N. E. 968.

[19] *Fox* v. *Buffalo Park* (1897) 21 App. Div. 321, 47 N. Y. Supp. 788, aff'd no opinion (1900) 163 N. Y. 559, 57 N. E. 1109.

[20] *Junkerman* v. *Tilyou Realty Co.* (1915) 213 N. Y. 404, 108 N. E. 190; *Lusk* v. *Peck* (1909) 132 App. Div. 426, 116 N. Y. Supp. 1051, aff'd no opinion (1910) 199 N. Y. 546, 93 N. E. 377; *Kane* v. *Lauer* (1913) 52 Pa. Super. Ct. 467; *Folkman* v. *Lauer* (1914) 244 Pa. 605, 91 Atl. 218.

[21] *May* v. *Ennis* (1903) 78 App. Div. 552, 79 N. Y. Supp. 896.

[22] He is not liable for defects arising subsequent to the date of the lease. *Clancy* v. *Byrne* (1874) 56 N. Y. 129.

[23] *Timlin* v. *Standard Oil Co.* (1891) 126 N. Y. 514, 27 N. E. 786; *House* v. *Metcalf* (1858) 27 Conn. 631; *Jessen* v. *Sweigert* (1884) 66 Cal. 182, 4 Pac. 1188.

[24] *Swords* v. *Edgar, supra,* footnote 17.

[25] *Junkerman* v. *Tilyou Realty Co., supra,* footnote 20.

[26] *Kane* v. *Lauer, supra,* footnote 20.

any the less civil nuisances because only the tenant is inconvenienced by them. Moreover, occasionally where the court has apparently predicated liability on the theory of nuisance, at the same time it has held that the landlord was not liable unless he knew or should have known of the existence of the nuisance at the time of the demise.[27] This indicates that the real basis for the liability is negligence, for the creator of a nuisance is liable therefor irrespective of whether or not he used due care.[28] While the tenant, by leasing the premises may waive his own right to recover for a nuisance, it is difficult to see how he can waive the right of his customer,[29] but not of a baseball fan.[30] The distinction based upon implied invitation seems equally untenable. To say that a lessor impliedly invites the lessee's customer to an amusement park[31] but not to his place of business[32] is indulging in fiction. Upon the theory of negligence, the distinction is open to similar objections. Of course, the use for which a landlord leases the demised premises has a bearing upon whether or not he is guilty of negligence. For instance, it might well be negligent for a landlord to lease a defectively floored room for a public entertainment whereas it might not be negligent to lease the some room for storing feather dusters. But the weight to which the floor would be subjected and not the fact that the use was public would be primarily responsible for the difference in the legal consequences of the landlord's conduct.

The "public use" doctrine has not been well defined by the courts. Thy have made no attehpt to declare exactly what constitutes a "public use". Indeed the entire doctrine has been repudiated in a few cases.[33] In the case of *Wilcox* v. *Hines*,[34] in allowing the tenant to recover for injuries received from the defective condition of the leased premises, the court declared that the liability of the landlord arose from the wrong of leasing the premises in a condition dangerous to the tenant, when he knew or by the exercise of reasonable care should have known the danger.[35] Theoretically, this seems to be the sound view. If in some jurisdictions precedent forbids the abandonment of the distinction between public and private use, at least the courts should recognize that what they regard as an exception is logically the rule and vice versa.[36]

But even if this conclusion be correct, yet the instant case may be rightly decided; for there apparently the dilapidated condition of the shed was patent and not even a member of the public can recover for injuries caused by patent defects.[37]

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[27] *Timlin* v. *Standard Oil Co., supra,* footnote 23; *Ahearn* v. *Steele* (1889) 115 N. Y. 203, 22 N. E. 193; see *Wolf* v. *Kilpatrick* (1886) 101 N. Y. 146, 4 N. E. 188. [28] Burdick, *Torts* (3rd ed. 1913) § 492.

[29] *Burdick* v. *Cheadle* (1875) 26 Oh. St. 393.

[30] *Folkman* v. *Lauer, supra,* footnote 20.

[31] *Junkerman* v. *Tilyou Realty Co., supra,* footnote 20.

[32] *Burdick* v. *Cheadle, supra,* footnote 29.

[33] *Wilcox* v. *Hines* (1898) 100 Tenn. 538, 46 S. W. 297. In *Edwards* v. *New York etc. Ry.* (1885) 98 N. Y. 245, 249, the majority of the court declared, "there is no distinction stated in any authority between cases of a demise of dwelling houses and of buildings to be used for public purposes. The responsibility of the landlord is the same in all cases. If guilty of negligence . . . he is liable; if not so guilty, no liability ataches to him." [34] *Supra,* footnote 33.

[35] The court said, "But we are unable to see any grounds for the application of a different rule in such [public use] cases. In the one case we have an instance of a quasi-public nuisance; in the other, a case of a quasi-private nuisance. But the obligation not to expose the individual to danger is the same as that not to expose the public to danger." (Followed in *Beamen* v. *Grooms* (1917) 138 Tenn. 320, 325, 197 S. W. 1090).

[36] Of course the lessor is always responsible for the condition of parts of the demised premises over which he retains control. *Trustees etc.* v. *Foster* (1898) 156 N. Y. 354, 50 N. E. 971; *Leroyd* v. *Godfrey* (1885) 138 Mass. 315.

[37] *Ten Broeck* v. *Wells, Fargo & Co.* (C. C. 1891) 47 Fed. 690.